

AMENDED IN SENATE JUNE 16, 2008

AMENDED IN ASSEMBLY MAY 8, 2008

AMENDED IN ASSEMBLY APRIL 8, 2008

AMENDED IN ASSEMBLY MARCH 25, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## ASSEMBLY BILL

**No. 2863**

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**Introduced by Assembly Member Leno**

February 22, 2008

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An act to amend Sections 218, 218.3, and 739.5 of, and to add Article 3 (commencing with Section 2868) to Chapter 9 of Part 2 of Division 1 of, the Public Utilities Code, relating to electricity.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2863, as amended, Leno. Independent solar energy producers: master-meter customers.

~~Under~~

(1) *Under* existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. An electrical corporation is defined as including every corporation or person owning, controlling, operating, or managing any electric plant for compensation within this state, except where electricity is generated on or distributed by the producer through private property solely for its own use or the use of its tenants and not for sale or transmission to others. Existing law requires that, when gas or electric service is provided by a master-meter customer to users who are tenants of a mobilehome park, apartment building, or similar residential complex, the master-meter customer charge each user at the same rate

which would be applicable if the user were receiving gas or electricity directly from the gas or electric company *electrical corporation*. Existing law creates further requirements for master-meter customers and for the corporations which provide service to them.

This bill would require ~~the~~ a master-meter customer to charge each user a rate not to exceed the rate that would be applicable if the user were receiving gas or electricity, or both, directly from the gas or electrical corporation.

This bill would additionally create an exception from the definition of an “electrical corporation” for an independent solar energy producer, as defined and meeting the requirements described below, ~~employing one or more photovoltaic generation systems for the generation of electricity, and for an association of a common interest development, providing electricity to its members or their tenants pursuant to the bill’s provisions.~~

(2) Existing law defines an “electric service provider” as an entity that offers electrical service to customers within the service territory of an electrical corporation, excluding electrical corporations, local publicly owned electric utilities, and certain cogenerators. Provisions of the existing Public Utilities Act restructuring the electrical services industry require that electric service providers register with the commission and provide for the authorization of direct transactions between electric service providers and end-use customers.

This bill would recast the existing definition and additionally create an exception for an independent solar energy producer and for an association of a common interest development, providing electricity to its members or their tenants, pursuant to the bill’s provisions.

~~This~~

(3) This bill would require an independent solar energy producer contracting for the sale of electricity or the lease of a generation system to a person or common interest development association for use in a residence to make certain disclosures to the buyer or lessee and to record a document that contains notice of the contract, as provided. The bill would require a master-meter customer of an electric utility who purchases electricity or leases a generation system from an independent solar energy producer, and who provides electric service to users who are tenants of a mobilehome park, apartment building, or similar residential complex, to charge each user of the electric service that is under a submetered system a rate for the solar generated electricity not to exceed the rate charged by the independent solar energy producer or

the electric utility's rate for an equivalent amount of electricity, whichever is lower.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 218 of the Public Utilities Code is  
2 amended to read:

3 218. (a) "Electrical corporation" includes every corporation  
4 or person owning, controlling, operating, or managing any electric  
5 plant for compensation within this state, except where electricity  
6 is generated on or distributed by the producer through private  
7 property solely for its own use or the use of its tenants and not for  
8 sale or transmission to others.

9 (b) "Electrical corporation" does not include a corporation or  
10 person employing cogeneration technology or producing power  
11 from other than a conventional power source for the generation of  
12 electricity solely for any one or more of the following purposes:

13 (1) Its own use or the use of its tenants.

14 (2) The use of or sale to not more than two other corporations  
15 or persons solely for use on the real property on which the  
16 electricity is generated or on real property immediately adjacent  
17 thereto, unless there is an intervening public street constituting the  
18 boundary between the real property on which the electricity is  
19 generated and the immediately adjacent property and one or more  
20 of the following applies:

21 (A) The real property on which the electricity is generated and  
22 the immediately adjacent real property is not under common  
23 ownership or control, or that common ownership or control was  
24 gained solely for purposes of sale of the electricity so generated  
25 and not for other business purposes.

26 (B) The useful thermal output of the facility generating the  
27 electricity is not used on the immediately adjacent property for  
28 petroleum production or refining.

29 (C) The electricity furnished to the immediately adjacent  
30 property is not utilized by a subsidiary or affiliate of the corporation  
31 or person generating the electricity.

32 (3) Sale or transmission to an electrical corporation or state or  
33 local public agency, but not for sale or transmission to others,

1 unless the corporation or person is otherwise an electrical  
2 corporation.

3 (c) “Electrical corporation” does not include a corporation or  
4 person employing landfill gas technology for the generation of  
5 electricity for any one or more of the following purposes:

6 (1) Its own use or the use of not more than two of its tenants  
7 located on the real property on which the electricity is generated.

8 (2) The use of or sale to not more than two other corporations  
9 or persons solely for use on the real property on which the  
10 electricity is generated.

11 (3) Sale or transmission to an electrical corporation or state or  
12 local public agency.

13 (d) “Electrical corporation” does not include a corporation or  
14 person employing digester gas technology for the generation of  
15 electricity for any one or more of the following purposes:

16 (1) Its own use or the use of not more than two of its tenants  
17 located on the real property on which the electricity is generated.

18 (2) The use of or sale to not more than two other corporations  
19 or persons solely for use on the real property on which the  
20 electricity is generated.

21 (3) Sale or transmission to an electrical corporation or state or  
22 local public agency, if the sale or transmission of the electricity  
23 service to a retail customer is provided through the transmission  
24 system of the existing local publicly owned electric utility or  
25 electrical corporation of that retail customer.

26 (e) “Electrical corporation” does not include an independent  
27 solar energy producer ~~employing one or more photovoltaic~~  
28 ~~generation systems for the generation of electricity, or an~~  
29 ~~association of a common interest development, providing electricity~~  
30 ~~to its members or their tenants, pursuant to Article 3 (commencing~~  
31 ~~with Section 2868) of Chapter 9 of Part 2.~~

32 (f) The amendments made to this section at the 1987 portion of  
33 the 1987–88 Regular Session of the Legislature do not apply to  
34 any corporation or person employing cogeneration technology or  
35 producing power from other than a conventional power source for  
36 the generation of electricity that physically produced electricity  
37 prior to January 1, 1989, and furnished that electricity to  
38 immediately adjacent real property for use thereon prior to January  
39 1, 1989.

1     *SEC. 2. Section 218.3 of the Public Utilities Code is amended*  
2     *to read:*

3     218.3. (a) “Electric service provider” means an entity that  
4     offers electrical service to customers within the service territory  
5     of an electrical corporation, ~~as defined in Section 218, but and~~  
6     *includes the unregulated affiliates and subsidiaries of an electrical*  
7     *corporation.*

8     (b) “Electric service provider” does not include an entity that  
9     offers electrical service solely to service customer load consistent  
10    with subdivision (b) of Section 218, and does not include an  
11    electrical corporation, ~~as defined in Section 218, or a public agency~~  
12    that offers electrical service to residential and small commercial  
13    customers within its jurisdiction, or within the service territory of  
14    a local publicly owned electric utility. ~~“Electric service provider”~~  
15    ~~includes the unregulated affiliates and subsidiaries of an electrical~~  
16    ~~corporation, as defined in Section 218.~~

17    (c) “Electric service provider” *does not include an independent*  
18    *solar energy producer, or an association of a common interest*  
19    *development providing electricity to its members or their tenants,*  
20    *pursuant to Article 3 (commencing with Section 2868) of Chapter*  
21    *9 of Part 2.*

22    ~~SEC. 2.~~

23    *SEC. 3. Section 739.5 of the Public Utilities Code is amended*  
24    *to read:*

25    739.5. (a) The commission shall require that, whenever gas  
26    or electric service, or both, is provided by a master-meter customer  
27    to users who are tenants of a mobilehome park, apartment building,  
28    or similar residential complex, the master-meter customer shall  
29    charge each user of the service at a rate not to exceed the rate that  
30    would be applicable if the user were receiving gas or electricity,  
31    or both, directly from the gas or electrical corporation. The  
32    commission shall require the corporation furnishing service to the  
33    master-meter customer to establish uniform rates for master-meter  
34    service at a level that will provide a sufficient differential to cover  
35    the reasonable average costs to master-meter customers of  
36    providing submeter service, except that these costs shall not exceed  
37    the average cost that the corporation would have incurred in  
38    providing comparable services directly to the users of the service.

39    (b) Every master-meter customer of a gas or electrical  
40    corporation subject to subdivision (a) who, on or after January 1,

1 1978, receives any rebate from the corporation shall distribute to,  
2 or credit to the account of, each current user served by the  
3 master-meter customer that portion of the rebate which the amount  
4 of gas or electricity, or both, consumed by the user during the last  
5 billing period bears to the total amount furnished by the corporation  
6 to the master-meter customer during that period.

7 (c) An electrical or gas corporation furnishing service to a  
8 master-meter customer shall furnish to each user of the service  
9 within a submetered system every public safety customer service  
10 that it provides beyond the meter to its other residential customers.  
11 The corporation shall furnish a list of those services to the  
12 master-meter customer who shall post the list in a conspicuous  
13 place accessible to all users. Every corporation shall provide these  
14 public safety customer services to each user of electrical or gas  
15 service under a submetered system without additional charge unless  
16 the corporation has included the average cost of these services in  
17 the rate differential provided to the master-meter customer on  
18 January 1, 1984, in which case the commission shall deduct the  
19 average cost of providing these public safety customer services  
20 when approving rate differentials for master-meter customers.

21 (d) Every master-meter customer is responsible for maintenance  
22 and repair of its submeter facilities beyond the master-meter, and  
23 nothing in this section requires an electrical or gas corporation to  
24 make repairs to or perform maintenance on the submeter system.

25 (e) Every master-meter customer shall provide an itemized  
26 billing of charges for electricity or gas, or both, to each individual  
27 user generally in accordance with the form and content of bills of  
28 the corporation to its residential customers, including, but not  
29 limited to, the opening and closing readings for the meter, and the  
30 identification of all rates and quantities attributable to each block  
31 in the applicable rate structure. The master-meter customer shall  
32 also post, in a conspicuous place, the applicable prevailing  
33 residential gas or electrical rate schedule, as published by the  
34 corporation.

35 (f) The commission shall require that every electrical and gas  
36 corporation shall notify each master-meter customer of its  
37 responsibilities to its users under this section.

38 (g) The commission shall accept and respond to complaints  
39 concerning the requirements of this section through the consumer  
40 affairs branch, in addition to any other staff that the commission

1 deems necessary to assist the complainant. In responding to the  
2 complaint, the commission shall consider the role that the office  
3 of the county sealer in the complainant's county of residence may  
4 have in helping to resolve the complaint and, where appropriate,  
5 coordinate with that office.

6 ~~SEC. 3.~~

7 *SEC. 4.* Article 3 (commencing with Section 2868) is added  
8 to Chapter 9 of Part 2 of Division 1 of the Public Utilities Code,  
9 to read:

10  
11 Article 3. Independent Solar Energy Producers  
12

13 2868. The following definitions shall apply for purposes of  
14 this article:

15 (a) "Association of a common interest development" means a  
16 nonprofit corporation or unincorporated association created for  
17 the purpose of managing a common interest development as  
18 defined in subdivision (c) of Section 1351 of the Civil Code.

19 (b) "Electric utility" means an electrical corporation as defined  
20 in Section 218, a local publicly owned electric utility as defined  
21 in Section 9604, or an electrical cooperative as defined in Section  
22 2776.

23 (c) "Generation system" means any configuration of  
24 photovoltaic generation that has a single interconnection with the  
25 electric utility transmission or distribution network.

26 (d) "Independent solar energy producer" means a corporation  
27 or person employing one or more photovoltaic generation systems  
28 for the generation of electricity for any one or more of the  
29 following purposes:

30 (1) Its own use or the use of its tenants.

31 (2) The use of, or sale to, not more than two other corporations  
32 or persons per generation system solely for use on the real property  
33 on which the electricity is generated, or on real property  
34 immediately adjacent thereto.

35 (3) The use of, or sale to, an association of a common interest  
36 development solely for use by, or sale to, its members or their  
37 tenants, and solely for use on the real property on which the  
38 electricity is generated, or on real property immediately adjacent  
39 thereto.

1 (4) Sale or transmission to an electrical corporation or a local  
2 or state agency.

3 (e) “Real property” means a single parcel of land.

4 2869. (a) An independent solar energy producer contracting  
5 for the sale of electricity or the lease of a generation system, to a  
6 person, or an association of a common interest development, for  
7 use in a residence shall include a disclosure to the buyer or lessee  
8 that, at a minimum, includes all of the following:

9 (1) A good faith estimate of the kilowatthours to be delivered  
10 by the generation system.

11 (2) A plain language explanation of the terms under which the  
12 pricing will be calculated over the life of the contract and a good  
13 faith estimate of the price per kilowatthour.

14 (3) A plain language explanation of operation and maintenance  
15 responsibilities of the contract parties.

16 (4) A plain language explanation of the disposition of the  
17 generation system at the end of the term of the contract.

18 (b) An independent solar energy producer contracting for the  
19 sale of electricity or the lease of a generation system, to a person,  
20 or an association of a common interest development, for use in a  
21 residence shall record a notice of that contract against the title to  
22 the real property on which the electricity is generated, and against  
23 the title to any adjacent real property on which the electricity will  
24 be used, in the office of the county recorder for the county in which  
25 the real property is located. The notice shall include the name,  
26 address, and telephone number of the independent solar energy  
27 producer, identify whether the contract is a contract for the sale  
28 of electricity or the lease of a generation system, and provide the  
29 dates on which the contract commences and terminates.

30 (c) A master-meter customer of an electric utility who purchases  
31 electricity or leases a generation system from an independent solar  
32 energy producer, and who provides electric service to users who  
33 are tenants of a mobilehome park, apartment building, or similar  
34 residential complex, shall do both of the following:

35 (1) Charge each user of the electric service that is under a  
36 submetered system a rate for the solar generated electricity not to  
37 exceed the rate charged by the independent solar energy producer  
38 or the electric utility’s rate for an equivalent amount of electricity,  
39 whichever is lower.



1     (2) Comply with the provisions of Section 739.5 or 12821.5,  
2     and any rules set forth by an electric utility for master-meter  
3     customers.

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